

Message Text

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TO AMEMBASSY TOKYO PRIORITY

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E.O. 11652: N/A

TAGS:CGEN: (IN RE NISSAN MOTOR CO., MDL 120, S.D. FLA.)

SUBJECT:JUDICIAL ASSISTANCE IN ABOVE CASE: REQUEST OF
FEDERAL JUDGE TO ACT AS MASTER AT TAKING OF DEPOSITION.

REF: TOKYO 7501 OF 8/3/71

1. ABOVE CASE IS A PRIVATE ANTI-TRUST ACTION WHICH HAS BEEN
PENDING SINCE 1973. PARTIES AGREE THAT RESOLUTION OF CASE
WOULD BE AIDED BY DEPOSITION OF OFFICERS OF NISSAN MOTORS
CORP. IN JAPAN. NISSAN HAS CONSENTED TO TAKING OF
DEPOSITION.

2. UNDER NORMAL U.S. PRACTICE, CONSENSUAL DEPOSITION WOULD
BE CONDUCTED BY PARTIES, WITHOUT ANY PARTICIPATION BY JUDGE.
HOWEVER, WHEN CASE IS COMPLEX, AS THIS ONE IS- JUDGE IS
SOMETIMES ASKED TO BE PRESENT A DEPOSITION TO RULE ON
EVIDENTIARY QUESTIONS (E.G. RELEVANCY, PRIVILEGE, ETC.). IF
JUDGE WERE NOT PRESENT, PROCEEDINGS WOULD BE HALTED WHILE
PARTIES SOUGHT RULING FROM COURT.

3. BECAUSE PARTIES ANTICIPATE THAT RULINGS WILL BE NEEDED,
AND BECAUSE OF IMPRACTICABILITY OF SEEKING DECISION FROM
COURT AS TO PROPIETY OF EACH CONTESTED QUESTION, PARTIES
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DESIRE TO BRING TRIAL JUDGE WITH THEM. TRIAL JUDGE, HON. C. CLYDE ATKINS, IS WILLING TO GO, BUT HAS SOUGHT DEPARTMENT'S ASSISTANCE IN DETERMINING WHETHER GOJ WOULD PERMIT PARTICIPATION IN THE DEPOSITION TO THE EXTENT MENTIONED ABOVE. IT SHOULD BE POINTED OUT THAT FEDERAL

JUDGE HAS NO AUTHORITY TO HOLD COURT OUTSIDE HIS JUDICIAL DISTRICT. THE ONLY AUTHORITY JUDGE ATKINS WILL POSSESS IN JAPAN IS THAT CONFERRED ON HIM BY THE PARTIES, WHO WILL AGREE IN ADVANCE TO BE BOUND BY HIS ABILITY TO MAKE THE NECESSARY RULINGS. CONCEPTUALLY, FROM US COURT'S VIEWPOINT, HE WILL BE CONSIDERED A COMMISSIONER OR A SPECIAL MASTER.

4. GIVEN THE FOREGOING, DEPARTMENT CONSIDERS THAT THIS REQUEST SHOULD NOT BE UNACCEPTABLE TO THE GOJ, IN LIGHT OF THEIR DECISION IN THE MISTSUI CASE (REPORTED REFTEL). NEVERTHELESS, DEPT FEELS RECONFIRMATION OF JAPANESE POSITION IS DESIRABLE AND REQUESTS EMBASSY TO MAKE APPROPRIATE INQUIRIES.

5. IF GOJ HAS NO OBJECTION, PARTIES WOULD LIKE TO BEGIN PROCEEDINGS 11/24/75. OFFICES OF NISSAN CORP. WILL BE USED, AND NISSAN WILL PROVIDE STENO. HOWEVER, CONOFF MAY BE NEEDED TO ADMINISTER OATH, AND INTERPRETER MAY BE REQUIRED. (WITH REGARD TO ADMINISTRATION OF OATH, WOULD GOJ OBJECT IF JUDGE ATKINS APPOINTED HIMSELF AS COMMISSIONER TO TAKE TESTIMONY, WITH POWER TO ADMINISTER OATHS?) KISSINGER

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